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| 10/052,762      | 01/19/2002  | Stephen R. Okros     |                     | 4207             |

7590 05/18/2004  
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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT PAPER NUMBER

1761

DATE MAILED: 05/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/052,762

Applicant(s)

OKROS, STEPHEN R.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/19/02.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 6, 7, 8-10 and 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlson (2,758,458) in view of Wexler (4,938,688), Wexler (4,884, 966) and Fuschetto (5,096,274), further in view of Zefran (4,219,119),.

In regard to claim 1, Carlson discloses a germ protective cake cover assembly comprising a generally transparent cover molded in the shape of a common cake, the cover comprising a top surface and side surface, the top surface comprising a plurality of recessed round apparatus which are capable of receiving and holding candles, and a bottom piece upon which the cake sits, the bottom piece of a shape corresponding to that of the cover (e.g. in this case, circular), the bottom piece functioning to receive the cover, effectively enclosing the cake therein, the assembly functioning to protect the cake from germs from individuals blowing out candles thereon, while providing a means to view the cake and functioning to provide a storage container for the cake. Wexler ('688) and Wexler ('966) are relied on as further evidence of germ protective cake cover assemblies, with covers and bases and provision for candles whereas Fuschetto et al is further evidence of the candle holding cover. Claim 1 differs from Carlson in the recitation that the top surface has a message slot to slidably receive a text message panel therein. As disclosed, the nature of this slot is unclear. See the 35 USC 112, first paragraph rejection below. In any case, Fuschetto et al disclose providing the top surface of a cake shield/cover with a slot (e.g. 21, see Fig 3) so that an article bearing a message may be slidably

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placed in the slot. Fuschetto et al discloses the article can be wax numbers. This would present indicia imparting a message; i.e. the persons age. Since Zefran can be relied on as further evidence of personalizing indicia or messages by associating such messages with cake cover (see col. 2, para. 2), what message one chooses to convey and the orientation of such message is seen to have been obvious in view of the art taken as a whole. In regard to claim 4, the number of recessed apertures provided in the cover is an obvious matter of choice and solely a function of how many candles one is willing to provide for. In regard to claim 6, Carlson and the two Wexler references clearly teach locking means. In regard to claim 8, the plastic containers of Carlson and the art taken as a whole would be capable of being placed in the freezer. It is also noted that storing cakes in plastic containers is notoriously old. In regard to claim 10, which recites that the assembly is manufactured in a variety of sizes, it is noted that the claim is claiming only one assembly. In any case, to provide a plurality of assemblies to accommodate varying sizes of cake, once it is known to provide such an assembly, is seen to have been an obvious matter of chose and/or design. In regard to claim 12, whether the aperture was wide enough for the candle to pass through, down into the cake would have been an obvious function of whether one wanted to penetrate the cake or not. In regard to claim 13, the art taken as a whole including Carlson and Zefran teach plastic assemblies which are considered to be durable. In regard to claims 14 and 15, to provide the assembly with decorations such as graphics, indicia, etc is seen to have been an obvious matter of choice and/or design. See e.g. col. 2, para 2. of Zefran in this regard.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Stewart (6,616,958).

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Claims 2 and 3 further recite that the assembly comprises a plurality of previously determined text phrase panels and letters of the alphabet. This appears to be in the nature of a kit. Zefran discloses that the cake container can be provided with decorative indicia to be associated with the cover and personalize the assembly. The particular indicia one chooses to provide is seen to have been an obvious matter of choice. Stewart can be relied on as further evidence to show that it was conventional to provide indicia/messages/graphics in sheet form for decorating. In Stewart's case, the cake is decorated directly, but Zefran already teaches decorating the cover.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Tarozzi et al (4,667, 484).

Claim 5 recites that the side of the cover has indentations to facilitate lifting (and lowering) the cover. That is, the indentations act as a handle. Carlson teaches a handle for lifting the cover. As evidenced by Tarozzi et al, it was well established to provide a cover with an indentation for lifting. To modify Carlson and substitute one conventional lifting means for another conventional lifting means or even add additional conventional lifting means for its art recognized and applicants intended function would therefore have been obvious.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of James (4,705,163).

Claim 7 recites that the bottom piece has handles. As evidenced by James, it is notoriously old to provide a cake container base with handle (24). To modify the combination and provide handles for their art recognized and applicants intended function would therefore have been obvious.

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Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Casalta Dominique (FRE 2798274).

Claim 11 recites that the apertures in the cake cover can receive and hold candle holders. Carlson discloses the apertures can hold candles. To adapt apertures to hold the candy plus holder is shown to have been obvious by Casalta Dominique and to modify the combination to adjust for a candle holder for its art recognized and applicants intended function is seen to have been an obvious matter of choice and/or design.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-5 are rejected under 35 USC 112, first paragraph as being non-enabling. The slot, its configuration and function are not clear. Figure 2 shows the slot as a small rectangular slit with a hemispherical portion extending from the rectangular slot. What does the dotted line represent? Applicant is cautioned about the introduction of New Matter.

The remainder of the references are cited as pertinent art.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday from 7:00 to 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Weinstein/af  
May 10, 2004

  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
5/14/04